

## HOUSE BILL NO. 447

INTRODUCED BY J. POMNICHOWSKI

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE OPENCUT MINING ACT; REQUIRING REVIEWS OF CERTAIN OPENCUT OPERATIONS; LIMITING EXPANSIONS OF OPENCUT OPERATIONS BY AMENDMENT; REVISING RECLAMATION REQUIREMENTS; EXEMPTING GOVERNMENTS FROM CERTAIN REQUIREMENTS; AND AMENDING SECTIONS 82-4-405, 82-4-432, AND 82-4-434, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Plan of operation review -- mandatory.** (1) Subject to the provisions of 82-4-405, the department shall review the plan of operation for an opencut operation every 5 years from the date a permit or an amended permit is issued.

(2) The review must include an inspection of the opencut operation to ensure compliance with the plan of operation.

(3) At the time of inspection, at least 25% of the permitted acreage must be under reclamation.

(4) If the department finds that any part of the plan of operation is being violated or the minimum amount of reclamation is not met, the department, after 30 days' written notice, shall order the operator to cease mining and, if the operator does not cease, may issue an order to reclaim, a notice of violation, or an order of abatement or may institute an action to enjoin further operation and may sue for damages for breach of the conditions of the permit, for payment of the performance bond, or for both.

**Section 2.** Section 82-4-405, MCA, is amended to read:

**"82-4-405. Inapplicability to government.** ~~The~~ Neither the provisions of this part relating to fees or bonds ~~do not~~ nor the provisions of [section 1] apply to the federal government or its agencies, the state of Montana, counties, cities, or towns."

**Section 3.** Section 82-4-432, MCA, is amended to read:

**"82-4-432. Application for permit -- contents -- issuance -- amendment.** (1) An application for a permit must be made using forms furnished by the department and must contain the following:

1 (a) the name of the applicant and, if other than the owner of the land, the name and address of the  
2 owner;

3 (b) the type of operation to be conducted;

4 (c) the estimated volume of overburden and materials to be removed;

5 (d) the location of the proposed opencut operation by legal description and county;

6 (e) the date when the opencut operation is proposed to commence; and

7 (f) a statement that the applicant has the legal right to mine the designated materials in the lands  
8 described.

9 (2) The application must be accompanied by:

10 (a) a bond or security meeting the requirements as set out in this part;

11 (b) a statement from the local governing body having jurisdiction over the area to be mined certifying that  
12 the proposed sand and gravel opencut operation complies with applicable local zoning regulations adopted under  
13 Title 76, chapter 2;

14 (c) a plan of operation that meets the requirements of 82-4-434; and

15 (d) written documentation that the landowner has been consulted about the proposed plan of operation.

16 (3) If, prior to applying for a permit, a person notifies the department of the intention to submit an  
17 application and requests that the department examine the area to be mined, the department shall examine the  
18 area and make recommendations to the person regarding the proposed opencut operation. The person may  
19 request a meeting with the department. The department shall hold a meeting if requested.

20 (4) (a) Except as provided in 75-1-208(4)(b), upon receipt of an application containing all items listed in  
21 subsections (1) and (2), the department shall, within 30 days, review the application, inspect the proposed site,  
22 and notify the person whether or not the department believes that the application is acceptable. An application  
23 is acceptable if it complies with all requirements of subsections (1) and (2). If the department determines that the  
24 application is not acceptable, the department shall include in the notification a detailed identification of all  
25 deficiencies.

26 (b) Within 30 days of receipt of the applicant's responses to the identified deficiencies, the department  
27 shall notify the applicant if the application is acceptable or not. If the application is unacceptable, the notice must  
28 include a detailed explanation of the remaining deficiencies.

29 (c) The department may for sufficient cause extend either or both of the 30-day review periods for an  
30 additional 30 days if it notifies the applicant of the extension prior to the end of the respective original 30-day

1 period. The department shall include in the notification of extension the reason for the extension.

2 (d) If the application is acceptable, the department shall issue a permit to the operator that entitles the  
3 operator to engage in the opencut operation on the land described in the application.

4 (5) An operator may amend a permit by submitting an amendment application to the department, except  
5 that an amendment may not propose an expansion of the currently permitted acreage by more than 50%. Upon  
6 receipt of the amendment application, the department shall review it in accordance with the requirements and  
7 procedures in subsection (4). If the amendment application is acceptable, the department shall issue an  
8 amendment to the original permit."

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10 **Section 4.** Section 82-4-434, MCA, is amended to read:

11 **"82-4-434. Plan of operation -- requirements.** (1) The department shall immediately submit a plan of  
12 operation received in a permit or permit amendment application involving expansion of the permit area to the state  
13 historic preservation office for evaluation of possible archaeological or historical values in the area to be mined.

14 (2) The department shall accept a plan of operation if the department finds that the plan complies with  
15 the requirements of this part and the rules adopted pursuant to this part and that after the opencut operation is  
16 completed, the affected land will be reclaimed to a productive use. Once the plan of operation is accepted by the  
17 department, it becomes a part of the permit but is subject to annual review and amendment by the department.  
18 Any amendment by the department must comply with the provisions of 82-4-436(2).

19 (3) The department may not accept a plan of operation unless the plan provides:

20 (a) that the affected land will be reclaimed for one or more specified uses, including but not limited to  
21 forest, pasture, orchard, cropland, residence, recreation, industry, habitat for wildlife, including food, cover, or  
22 water, or other reasonable, practical, and achievable uses;

23 (b) that whenever the opencut operation results in a need to prevent acid drainage or sedimentation on  
24 or in adjoining lands or streams, catchments, ponds, or other reasonable devices to control water drainage and  
25 sediment will be constructed and maintained, provided the devices will not interfere with other landowners' rights  
26 or contribute to water pollution;

27 (c) that soil and other suitable overburden will be salvaged and replaced on affected land, when required  
28 by the postmining land use, after completion or termination of that particular phase of the opencut operation. The  
29 depth of soil and other suitable overburden to be placed on the reclaimed area must be specified in the plan.

30 (d) that grading will result in a postmining topography conducive to the designated postmining land use;

(e) that waste will be buried on site in a manner that protects water quality and is compatible with the postmining land use or will be disposed of off site in accordance with state laws and rules;

(f) that all access, haul, and other support roads will be located, constructed, and maintained in a manner that controls and minimizes erosion;

(g) that the opencut operation will be conducted to avoid range and wildland fires and spontaneous combustion and that open burning will be conducted in accordance with suitable practices for fire prevention and control. Approval of the plan for fire prevention and control under this part does not relieve the operator of the duty to comply with the air quality permitting and protection requirement of Title 75, chapter 2.

(h) that archaeological and historical values on affected lands will be given appropriate protection;

(i) that except for those postmining land uses that do not require vegetation, each surface area of the mined premises that will be disturbed will be revegetated when its use for the opencut operation is no longer required;

(j) that seeding and planting will be done in a manner to achieve a permanent vegetative cover that is suitable for the postmining land use and that retards erosion;

(k) that reclamation will:

(i) start as soon as possible;

(ii) will be as concurrent with the opencut operation as feasible; and will

(iii) be completed within a specified length of time;

(l) that surface water and ground water will be given appropriate protection, consistent with state law, from deterioration of water quality and quantity that may arise as a result of the opencut operation;

(m) that noise and visual impacts on residential areas will be minimized to the degree practicable through berms, vegetation screens, and reasonable limits on hours of operation; and

(n) that any additional procedures, including monitoring, that are necessary, consistent with the purposes of this part, to prevent significant physical harm to the affected land or adjacent land, structures, improvements, or life forms will be implemented.

(4) If reclamation according to the plan of operation has not been completed in the time specified, the department, after 30 days' written notice, shall order the operator to cease mining and, if the operator does not cease, may issue an order to reclaim, a notice of violation, or an order of abatement or may institute an action to enjoin further operation and may sue for damages for breach of the conditions of the permit, for payment of the performance bond, or for both.

(5) (a) At any time during the term of the permit, the operator may for good reason submit to the department a new plan of operation or amendments to the existing plan, including extensions of time for reclamation.

(b) The department may approve the proposed new plan of operation or amendments to the existing plan if:

(i) the new plan of operation or amendments comply with the requirements of this section; and

(ii) (A) the operator has in good faith conducted opencut operations according to the existing plan of operation; or

(B) it is highly improbable that reclamation will be successful unless the existing plan of operation is replaced or amended.

(6) The permit, plan of operation, and amendments accepted by the department are a public record and are open to inspection."

**NEW SECTION. Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 82, chapter 4, part 4, and the provisions of Title 82, chapter 4, part 4, apply to [section 1].

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